

SENATE, No. 3117

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED JULY 23, 2015

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SYNOPSIS

Prohibits Division of Developmental Disabilities from compelling transfers of individuals with developmental disabilities from out-of-State to in-State facilities unless certain exceptions apply.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/4/2015)

1 AN ACT concerning individuals with developmental disabilities and
2 supplementing Title 30 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The Division of Developmental Disabilities, except as
8 provided in section 2 of this act, shall not transfer, or otherwise
9 compel the transfer of, an individual with a developmental
10 disability who is currently residing in an out-of-State placement to a
11 residential placement in this State, if the individual or the guardian
12 of the individual objects to such transfer in writing.

13
14 2. The provisions of section 1 of this act shall not apply if:

15 a. The United States Department of Justice, the Centers for
16 Medicare & Medicaid Services, or a federally-designated state
17 protection and advocacy organization has deemed the out-of-State
18 placement facility unsafe for individuals with developmental
19 disabilities residing in the facility.

20 b. The individual does not continue to be served by the same
21 out-of-State provider after the effective date of this act as the out-
22 of-State provider who served the individual prior to the effective
23 date of this act; provided, however, that this subsection shall not
24 apply if:

25 (1) the change of provider is due solely to corporate or other
26 organizational restructuring; or

27 (2) the division is unable to provide the individual with
28 equivalent necessary services and supports in-State as the individual
29 received out-of-State and such services and supports are available at
30 another out-of-State provider;

31 c. The individual or the guardian of the individual, as
32 applicable, is not in compliance with the provisions of State
33 regulations at N.J.A.C.10:46D-1.1 et seq., concerning contribution
34 to care and maintenance requirements, within 90 days of the
35 effective date of this act, or the individual or guardian fails to
36 continue to comply with these regulations for the duration of the
37 out-of-State care of the individual; provided, however, that:

38 (1) the division shall provide a payment schedule with
39 reasonable minimum payments to each non-compliant individual or
40 guardian within 60 days of the effective date of this act; and

41 (2) if the individual or guardian agrees in writing to the payment
42 schedule, compliance within 90 days of the effective date of this act
43 shall be presumed;

44 d. The individual is not enrolled in, or has not applied for
45 enrollment in, the State Medicaid program, established pursuant to
46 P.L.1968, c.413 (C.30:4D-1 et seq.), within 90 days of the effective
47 date of this act; or

1 e. The out-of-State provider fails to transmit to the division
2 written reports of life safety oversight and copies of all relevant
3 incident reports required by the law. The division shall provide
4 notice to providers if the reporting requirements change. In the
5 event a provider fails to transmit any relevant required report, the
6 division shall give notice to the provider of the deficiency and the
7 provider shall have 30 days from the date of the notice to cure the
8 deficiency.

9
10 3. Nothing in this act shall alleviate the obligations of the
11 department under section 9 of P.L.1977, c.82 (C.30:6D-9) or section
12 9 of P.L.1983, c.524 (C.30:6D-21).

13
14 4. This act shall take effect immediately.

15
16
17 STATEMENT

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19 This bill provides that, except as provided below, the Division of
20 Developmental Disabilities (DDD) in the Department of Human
21 Services (DHS) is not to transfer, or otherwise compel the transfer
22 of, an individual with a developmental disability who is currently
23 residing in an out-of-State placement to a residential placement in
24 this State, if the individual or the individual's guardian objects to
25 such transfer in writing.

26 The above provision would not apply under the following
27 conditions:

28 1) the United States Department of Justice, the Centers for
29 Medicare & Medicaid Services, or a federally-designated state
30 protection and advocacy organization has deemed the out-of-State
31 placement facility unsafe for individuals with developmental
32 disabilities residing in the facility;

33 2) the individual does not continue to be served by the same out-
34 of-State provider after the bill's effective date as the out-of-State
35 provider who served the individual prior to the effective date;
36 provided, however, that this provision would not apply if the
37 change is due solely to corporate or other organizational
38 restructuring; or DDD is unable to provide the individual with
39 equivalent necessary services and supports in-State as out-of-State
40 and the services and supports are available at another out-of-State
41 provider;

42 3) The individual or the individual's guardian is not in
43 compliance with the provisions of State regulations concerning
44 contribution to care and maintenance requirements within 90 days
45 of the effective date, or the individual or guardian fails to continue
46 to comply with these regulations for the duration of the out-of-State
47 care of the individual. However, the division is required to provide
48 a payment schedule with reasonable minimum payments to each

1 non-compliant individual or guardian within 60 days of the
2 effective date and, if the individual or guardian agrees in writing to
3 the payment schedule, compliance within 90 days is to be
4 presumed;

5 4) The individual is not enrolled in, or has not applied for
6 enrollment in, the State Medicaid program within 90 days of the
7 effective date; or

8 5) The out-of-State provider fails to transmit to DDD written
9 reports of life safety oversight and copies of all relevant incident
10 reports required by the law. DDD is to provide notice to providers
11 if the reporting requirements change. In the event a provider fails
12 to transmit any relevant required report, DDD is to give notice to
13 the provider of the deficiency and the provider has 30 days to cure
14 the deficiency.

15 Lastly, the bill provides that nothing in the bill is to alleviate the
16 obligations of DHS under the following two sections of law: 1)
17 section 9 of P.L.1977, c.82 (C.30:6D-9), which concerns a
18 requirement for services for individuals with developmental
19 disabilities to be designed to maximize developmental potential and
20 be provided humanely and in full recognition and respect for the
21 dignity and rights of each person receiving such services, and in a
22 least restrictive setting; and 2) section 9 of P.L.1983, c.524
23 (C.30:6D-21), which provides both that a transfer is to be made
24 only when consistent with the best interests of the individual with a
25 developmental disability, and that DHS is to ensure that if an
26 individual fails to adjust to life in a community residential facility,
27 the individual may return to the facility from which he was
28 transferred or to a more suitable community residential facility.